

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* O. KEELY, Minor.

UNPUBLISHED  
May 24, 2016

No. 329753  
Shiawassee Circuit Court  
Family Division  
LC No. 14-013529-NA

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Before: GADOLA, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her son, OK, pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and MCL 712A.19b(3)(g) (failure to provide proper care or custody). We affirm.

In March 2014, the Department of Health and Human Services (petitioner) filed a petition seeking to remove OK from respondent's care. According to the petition, respondent admitted a 16-year history of substance abuse involving prescription medications, marijuana, cocaine, LSD, alcohol, psilocybin mushrooms, and heroin, and she admitted to daily heroin use for the last four years. The petition alleged that respondent voluntarily entered a detoxification program and was successfully discharged from the program on March 5, 2014, but later that day, shoppers found respondent unconscious in the bathroom of a retail store after overdosing on heroin.

The court took jurisdiction over OK on the basis of respondent's no-contest plea. Nearly one year later, petitioner filed a supplemental petition to terminate respondent's parental rights, asserting in pertinent part that she relapsed multiple times despite substance abuse counseling and other services, and faced criminal charges for unlawfully driving away an automobile while on a suspended license. The petition also alleged that respondent inconsistently participated in parenting time, and that she gave birth to a second child in June 2015, who tested positive for opiates and cocaine at birth.<sup>1</sup> In September 2015, the court held a trial on the petition and thereafter terminated respondent's parental rights to OK.

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<sup>1</sup> The newborn also tested positive for methadone. During the last part of her pregnancy, respondent was undergoing a methadone-based drug addiction treatment program.

Respondent contends that the trial court clearly erred by finding that sufficient evidence established the statutory grounds. We review for clear error a trial court's determination that a ground for termination has been proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

The trial court determined that clear and convincing evidence supported terminating respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g), which provide the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

The trial court explained its reasoning for termination under MCL 712A.19b(3)(c)(i) as follows:

Those conditions that continue to exist, it doesn't mean they haven't changed. And, it doesn't mean they haven't improved. We do not have a positive drug screen for non-prescribed drugs within the last four months. Anyone could say the continual—or the condition of addiction will continue to exist for life. But, I don't believe that would in and of itself provide a statutory basis. But, I do believe the conditions continue to exist that are a sequela of addiction. And, that means a chronic dependence on other individuals with the hope that these other individuals will not steer you down the wrong path or back to a path of relapse that [respondent] has gone so many times in her past.

Respondent has a lengthy history of substance abuse. The testimony introduced at trial showed that she relapsed multiple times over the course of the case despite extensive substance abuse counseling and in-patient treatment. Respondent argues that she did not have any positive drug screens for non-prescribed medication after her positive drug screen on April 27, 2015. Thus, she asserts that she was drug-free from late April until the time of the termination hearing in September 2015. Respondent told her caseworker that this approximately four-month period was the longest that she abstained from abusing drugs since she was 14 years old.

Although this apparent recent progress is a positive step, it is only a step along respondent's 16-year path of drug abuse involving prescription medications, marijuana, cocaine,

LSD, alcohol, psilocybin mushrooms, and heroin. Moreover, respondent's progress has been called into doubt by the fact that she gave birth to a child in June 2015 who tested positive for cocaine and opiates. Further, in the year preceding this four-month period, respondent relapsed on heroin multiple times.

Additionally, respondent admitted that her boyfriend, the father of her newborn daughter, previously struggled with addiction. Respondent's caseworker indicated that "triggers" for respondent's substance abuse included relationships and her habit of drawing close to people "who are not good for her." Although the record does not indicate that respondent's boyfriend has negatively influenced respondent, her decision to become romantically involved with someone who also has a history of drug addiction supports the trial court's conclusion.

Respondent argues that the trial court clearly erred because she complied with her treatment plan. However, a parent must both comply with and benefit from the services provided. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). On this record, it is reasonable to conclude that respondent received some benefit from the services she participated in, but given the pernicious history of her drug abuse and the documented relapses, it is simply too soon to conclude that any benefit is pervasive and durable. Indeed, although her therapist expected respondent to be "a hundred percent successful with the methadone program" she was involved in, she testified that respondent needed counseling and treatment for "at least two years to finish addressing her addiction successfully and to finish allowing the mental health [treatment] to be successful so that she wouldn't have any relapse or lower her risk of relapse." Under these circumstances, the trial court did not clearly err by concluding that "[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(i). See *In re Fried*, 266 Mich App 535, 541-542; 702 NW2d 192 (2005).

Given that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence, we need not address respondent's challenge to the court's findings regarding MCL 712A.19b(3)(g). See *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Nonetheless, after reviewing the record, we perceive no clear error in the trial court's determination that clear and convincing evidence also supported terminating respondent's parental rights under MCL 712A.19b(3)(g).

Finally, respondent argues that the trial court clearly erred by finding that termination of her parental rights was in OK's best interests. We review a trial court's decision regarding a child's best interests for clear error. *Trejo*, 462 Mich at 356-357.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). When considering whether termination of parental rights is in a child's best interests, the court may consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

The trial court determined that termination was in OK's best interests because of the child's need for permanency and stability. Respondent argues that she has a bond with OK and that she is treating her addiction and mental health issues. Although this may be true, these considerations do not outweigh the fact that OK had been out of respondent's care and custody for over 18 months at the time of the termination hearing, during which period respondent had not shown that the conditions leading to his removal had improved to the point that he could be returned to her care, even temporarily. Therefore, the trial court did not clearly err when it determined that termination was in OK's best interests.

Affirmed.

/s/ Michael F. Gadola  
/s/ Deborah A. Servitto  
/s/ Douglas B. Shapiro